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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,681	12/31/2003	Bryon Paul Day	19589	2161

23556 7590 02/22/2006

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EXAMINER

MULLIS, JEFFREY C

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,681

Applicant(s)

DAY ET AL.

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 17-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 29-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9-05, 8-08, 7-05, 10-05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Applicant's election without traverse of Group I and species 4 in the reply filed on 12-6-05 is acknowledged.

Claims 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is unclear since the styrenic block copolymers required by claim 1 from which claim 10 depends already require olefinic monomers (i.e. styrene and dienes) reacted therein. If applicants are attempting to recite that the polyolefinic polymer is present as a mixture with the block copolymer, this is confusing since a block copolymer is a macromolecular compound, not a mixture.

Claims 10-12 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The term polyolefinic polymer encompasses the styrenic block copolymers of claim 1 from which claim 10 depends and therefore claim 10 does not further limit claim 1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-16, and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacob et al. (US 6,384,138).

Patentees disclose a blend of SIS and SBS with a compatible resin (abstract) in which the SBS may have as much as 40% styrene (paragraph bridging columns 3 and 4) and include Kraton D 1102 and Vector 4111 such as applicants specification at paragraph 86 discloses is suitable for use as applicants high melt flow rate block copolymer (column 4, lines 25-35 of the patent). Note the examples in Tables 1-4 for compositions having combinations of SBS, SIS and polymerizes olefinic resins such as ECR 373 as well as the above referred to trade named block copolymers.

Claims 2-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jacob et al. (US 6,384,138). As set out above the trade named materials used by patentees examples include Kraton D 1102 and Vector 4111 such as applicants specification at paragraph 86 discloses is suitable for use as applicants high melt flow rate block copolymer and applicants characteristics are therefore assumed to be inherent in the patent compositions.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Claims 1, 7-16 and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Hatfield et al (US 6,184,285).

Patentees disclose a composition having a combination of SBS and SIS (abstract) having up to 50% styrene and including Vector D-4461 (column 3, lines 5-45) and Kraton "D" series block copolymers as well as polymerized olefinic resin additives (note the tables disclosing the examples). See claim 2 of the patent for ratios as in claim 9.

Claims 2-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hatfield, cited above.

As set out above the trade named materials of patentees are disclosed by applicants specification to be useful in applicants invention and are therefore assumed to inherently poses applicants characteristics.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently

possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Claims 1-15 and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Cameron et al. (US 6,025,071).

Patentees disclose a composition which contains at least one SIS polymer and which may contain SBS and having applicants melt flow rate and which may have applicants styrene contents. Note column 3, line 55- column 4, line 65. Note example 3 for a composition with a combination of block copolymers.

Claims 1, 7-16 and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Grennes et al (US 5,444,121).

Patentees disclose a composition which may containing 2 parts SIS and one part SBS (column 3, lines 41-55) and in which a high styrene block copolymers having up to 40% styrene may be used (column 3, lines 9-23). Hydrogenated styrene-olefin-styrene may be added as a third component at the paragraph bridging columns 3 and 4.

Claims 2-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Grennes et al (US 5,444,121). With re to applicants melt flow rates, such are a function of molecular weight as are viscosities and high melt flow rate materials have low molecular weights and low viscosities. Note that the lowest viscosity block copolymer has only a twentieth that of

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the highest at column 3, lines 9-23 and thus the low viscosity material reasonably appears to correspond to applicants high melt flow rate materials.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

Jeffrey C. Mullis
J Mullis
Art Unit 1711

JCM

2-10-06

Jeffrey Mullis
Primary Examiner
Art Unit 1711

A handwritten signature in black ink, appearing to be 'JCM', is written over the printed name and title of the examiner.